

Legislative Blast **September 2014***

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EEOC ISSUES ENFORCEMENT GUIDANCE ON PREGNANCY DISCRIMINATION ISSUES

The United States Equal Employment Opportunity Commission (EEOC) issued Enforcement Guidance on Pregnancy Discrimination and Related Issues (Guidance) on July 14, 2014. The Guidance is available online at http://www.eeoc.gov/laws/guidance/pregnancy_guidance.cfm.

The Enforcement Guidance updates prior guidance on this subject in light of legal developments over the past thirty years. The Guidance includes discussions of:

- when employer actions may constitute unlawful discrimination on the basis of pregnancy, childbirth, or related medical conditions in violation of Title VII of the Civil Rights Act of 1964 (Title VII), as amended by the Pregnancy Discrimination Act of 1978 (PDA);
- the obligation of employers under the PDA to provide pregnant workers equal access to benefits of employment such as leave, light duty, and health benefits; and
- how Title I of the Americans with Disabilities Act (ADA), which went into effect over a decade after the PDA and was amended in 2008 to broaden the definition of disability, applies to individuals with pregnancy-related impairments.

The PDA clarifies that discrimination based on pregnancy, childbirth, or related medical conditions is a prohibited form of sex discrimination. It requires that employers treat women affected by pregnancy or related medical conditions the same way they treat non-pregnant applicants or employees who are similar in their ability or inability to work.

Title I of the ADA prohibits employment discrimination on the basis of disability and requires covered employers to provide reasonable accommodations to the known limitations of otherwise qualified employees and applicants for employment. Although pregnancy itself is not a disability, impairments related to pregnancy can be disabilities if they substantially limit one or more major life activities or substantially limited major life activities in the past. The ADA also covers pregnant workers who are regarded as having disabilities.

Under the PDA, an employer cannot fire, refuse to hire, demote, or take any other adverse action against a woman if pregnancy, childbirth, or a related medical condition was a motivating factor in the adverse employment action. The PDA prohibits discrimination with respect to all aspects of employment, including pay, job assignments, promotions, layoffs, training, and fringe benefits (such as leave and health insurance).

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The PDA's protection extends to differential treatment based on an employee's fertility or childbearing capacity. Thus, sex-specific policies restricting women from certain jobs based on childbearing capacity, such as those banning fertile women from jobs with exposure to harmful chemicals, are generally prohibited. An employer's concern about risks to a pregnant employee or her fetus will rarely, if ever, justify such restrictions. Sex-specific job restrictions can only be justified if the employer can show that lack of childbearing capacity is a bona fide occupational qualification (BFOQ).

An employer is also prohibited from discriminating against an employee because she has stated that she intends to become pregnant. Thus, demoting an employee with a good performance record two weeks after she informed her manager that she was trying to become pregnant would constitute evidence of pregnancy discrimination.

Both the PDA and the ADA apply to private and state and local government employers with 15 or more employees, labor organizations, employment agencies, and apprenticeship and training programs. The PDA applies to employees in the federal sector, as does Section 501 of the Rehabilitation Act of 1973, which applies the ADA's employment nondiscrimination standards. Beyond these federal laws, state and local laws in some jurisdictions provide additional protections.

U.S. TREASURY DEPARTMENT & IRS RELEASE ACA EMPLOYER MANDATE GUIDANCE

On August 28, 2014, the U.S. Department of Treasury and the Internal Revenue Service (IRS) released draft instructions along with revised draft tax forms that provide guidance to employers on how to comply with the Patient Protection and Affordable Care Act's (PPACA's) employer mandate. The IRS had initially released the draft tax forms on July 24, 2014, but without the instructions on how to correctly file the respective forms.

The recently released instructions address various tax forms employers must soon file under the mandate concerning the minimum essential health insurance coverage they offer to their workers. Under the PPACA health care law, the employer mandate is a requirement that all businesses with 50 or more full-time-equivalent employees provide health insurance for their full-time employees (and dependents) or pay a per-month "Employer Shared Responsibility Payment" on their federal tax returns for 2015.

The Employer Shared Responsibility Payment is not tax-deductible, and employers may be penalized \$2,000 per employee if they fail to provide affordable health insurance coverage to eligible workers. Employers will be required to pay an assessment if at least one of their full-time employees is certified to receive a premium tax credit in the individual health insurance marketplace. For this purpose, a "full-time employee" is defined as someone working on average 30 or more hours per week.

The employer mandate was originally due to take effect this year. However, the Obama administration delayed its implementation until 2015 in order to give the government ways to simplify reporting requirements for employers and to adapt health coverage and reporting systems. Starting in January 2015, the employer mandate is scheduled to take effect for large employers (those with 100 or more full-time employees).

Under the final PPACA regulations, large employers must offer health care coverage to 70 percent of their employees for 2015; the requirement is increased to 95 percent of covered employees in 2016. Medium-sized employers (those with 50-99 employees) can avoid penalties until 2016. Small employers (those with less than 50 full-time employees) are not required to fill out any forms or complete other paperwork in 2015. According to the federal government, the smallest-sized firms represent 96 percent of all the business entities. The other 4 percent is divided roughly evenly between medium and large employers.

Source: EEOC/SHRM